Supreme Court, U.S.
FILED
JUN 2 - 2003
OFFICE OF THE CLERK

(4) (5)

Nos. 02-1727 and 02-1733

IN THE

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

NATIONAL RIGHT TO LIFE COMMITTEE, INC., *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

On Appeals from the
United States District Court
for the District of Columbia

INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

ROGER M. WITTEN
WILMER, CUTLER &
PICKERING
399 Park Avenue
New York, NY 10022

SETH P. WAXMAN
Counsel of Record
RANDOLPH D. MOSS
ERIC J. MOGILNICKI
EDWARD C. DUMONT
PAUL R.Q. WOLFSON
WILMER, CUTLER &
PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Additional Counsel Listed On Inside Cover

23 P

BURT NEUBORNE
FREDERICK A.O. SCHWARZ, JR.
BRENNAN CENTER FOR JUSTICE
161 Avenue of the Americas,
12th Floor
New York, NY 10013

CHARLES G. CURTIS, JR.
DAVID J. HARTH
MICHELLE M. UMBERGER
HELLER EHRMAN WHITE & MCAULIFFE LLP
One East Main Street, Suite 201
Madison, WI 53703

BRADLEY S. PHILLIPS
MUNGER, TOLLES & OLSON LLP
355 South Grand Ave.
35th Floor
Los Angeles, CA 90071

E. JOSHUA ROSENKRANZ
HELLER EHRMAN WHITE & MCAULIFFE LLP
120 West 45th Street
New York, NY 10036

ALAN B. MORRISON
SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, N.W.
Washington, D.C. 20009

MICHAEL D. LEFFEL
A. KRISAN PATTERSON
JENNIFER L. MUELLER
STACY E. BECK
JERROD C. PATTERSON
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

FRED WERTHEIMER
ALEXANDRA EDSALL
DEMOCRACY 21
1825 Eye Street, N.W.
Suite 400
Washington, D.C. 20006

TREVOR POTTER
GLEN M. SHOR
CAMPAIGN LEGAL CENTER
1101 Connecticut Ave., N.W.
Suite 330
Washington, D.C. 20036

QUESTIONS PRESENTED

1. Whether the Court should summarily dispose of appellants' constitutional challenges to Sections 212, 214(b), 214(c), 304, 319, and 403(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, because those challenges are plainly nonjusticiable or insubstantial under settled law.

2. Whether, in other respects, the Court should note probable jurisdiction over appellants' constitutional challenges to BCRA, and set the appeals on those issues for briefing and oral argument.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

ARGUMENT 3

I. THE RNC APPELLANTS FAIL TO RAISE ANY JUSTICIABLE QUESTION WITH RESPECT TO THE COORDINATION RULEMAKING PROVISIONS OF BCRA SECTION 214(b)-(c) 3

II. THE RNC APPELLANTS LACK STANDING TO CHALLENGE THE "MILLIONAIRES PROVISIONS" OF BCRA SECTIONS 304 AND 319 4

III. THE NRLC APPELLANTS FAIL TO RAISE ANY JUSTICIABLE OR SUBSTANTIAL QUESTION WITH RESPECT TO BCRA SECTION 212 5

IV. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE GEOGRAPHIC SCOPE OF THE DISTRICT COURT'S INJUNCTIVE RELIEF 6

V. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE CONGRESSIONAL INTERVENORS' STANDING UNDER BCRA SECTION 403(b) 6

CONCLUSION 8

APPENDIX 1a

TABLE OF AUTHORITIES

CASES

Page(s)

Buckley v. *Valeo*, 424 U.S. 1 (1976) (per curiam) 7, 8
Clark v. *Kimmitt*, 431 U.S. 950 (1977) 2
Cook v. *Gralike*, 531 U.S. 510 (2001) 7
Don't Bankrupt Washington Committee v. *Continental Illinois National Bank & Trust Co.*, 460 U.S. 1077 (1983) 2
Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992) 5
Marshall v. *Meadows*, 921 F. Supp. 1490 (E.D. Va. 1996) 7
Meek v. *Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993) 7
Nixon v. *Shrink Missouri Government PAC*, 528 U.S. 377 (2000) 7
Raines v. *Byrd*, 521 U.S. 811 (1997) 7
Republican National Committee v. *FEC*, 445 U.S. 955 (1980) 2
Vote Choice, Inc. v. *DiStefano*, 4 F.3d 26 (1st Cir. 1993) 7
Whitmore v. *Arkansas*, 495 U.S. 149 (1990) 5

STATUTES

Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81
§ 212 ..... 5, 6
§ 214 ..... 3, 4
§ 304 4
§ 304(a) 4
§ 316 4
§ 319 4
§ 403(a) 3
§ 403(a)(3), (4) 1
§ 403(b) 6, 7

IN THE

Supreme Court of the United States

NO. 02-1727

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

NO. 02-1733

NATIONAL RIGHT TO LIFE COMMITTEE, INC., *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

INTRODUCTION

Although intervenor-appellees take issue with the positions taken on the merits by the Republican National Committee (RNC), *et al.*, and the National Right to Life Committee (NRLC), *et al.*, in their jurisdictional statements, we agree that many of the questions presented in their jurisdictional statements warrant plenary consideration by this Court.[1] In light of Sections 403(a)(3) and (a)(4) of the Bipar-

---

[1] Intervenor-appellees are Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin

tisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, which provide for direct and expedited review in this Court of any final decision of a three-judge district court hearing a challenge to the constitutionality of BCRA, and in light of the importance of the issues to the nation, intervenor-appellees submit that the Court should note probable jurisdiction over these appeals and set the cases for briefing and oral argument.

Some of the questions presented in the RNC and NRLC jurisdictional statements, however, do not warrant plenary consideration by this Court. Those questions raise challenges to BCRA that are either clearly nonjusticiable under well-settled principles of constitutional and administrative law, or otherwise so insubstantial as not to justify further briefing and argument. It is entirely appropriate for the Court to summarily dispose of appeals by dismissal or affirmance, insofar as they seek to raise issues that are nonjusticiable or insubstantial.[2] Summary disposition of such issues is especially appropriate in complex cases such as these, which present challenges by 77 separate parties to nearly two dozen separate provisions. *See* Supplemental Appendix to Jurisdictional Statement (JSSA) 10-15sa ("Chart of the Court's Rulings"), 76-77sa n.55 (per curiam). Through summary disposition, the Court can focus briefing and argument on those issues that warrant plenary review. Such summary disposition would promote the orderly and expedited resolution of the various pending challenges to BCRA.

Meehan, Senator Olympia Snowe, and Senator James Jeffords. The intervenors are also appellants in No. 02-1702, *McCain* v. *McConnell*.

[2] *See* S. Ct. R. 18.6 and 18.12; *see also Don't Bankrupt Wash. Comm.* v. *Continental Ill. National Bank & Trust Co.*, 460 U.S. 1077 (1983) (summary dismissal for want of jurisdiction, "it appearing appellant lacks standing to bring this appeal"); *Republican National Comm.* v. *FEC*, 445 U.S. 955 (1980) (summary affirmance of lower court decisions rejecting various constitutional challenges to campaign finance laws on the merits); *Clark* v. *Kimmitt*, 431 U.S. 950 (1977) (summary affirmance of D.C. Circuit's dismissal of various challenges to campaign finance laws as nonjusticiable).

ARGUMENT

I. THE RNC APPELLANTS FAIL TO RAISE ANY JUSTICIABLE QUESTION WITH RESPECT TO THE COORDINATION RULEMAKING PROVISIONS OF BCRA SECTION 214(b)-(c)

Like the McConnell appellants, the RNC appellants challenge the coordination rulemaking provisions of BCRA Section 214(b)-(c). *See* RNC J.S. Question Presented 2 and pp. 15-16. The RNC appellants contend that Section 214 directed the Federal Election Commission (FEC) to promulgate coordination rules that will *necessarily* encompass conduct that is truly independent of a candidate, and will make political parties responsible for independent expenditures by persons or entities with whom the parties have little if any relationship. *See* RNC J.S. 4, 6, 15-16.

For the reasons set forth at pages 7-12 of our response to the McConnell and NRA jurisdictional statements (Nos. 02-1674 and 02-1675, respectively), these challenges to Section 214 fail under well-established principles of justiciability and subject-matter jurisdiction. Appellants have no basis for a facial challenge to Section 214, for there is nothing in that provision that requires the FEC to issue regulations that would conflict with any constitutional principle that this Court has articulated with respect to independent expenditures. To the extent the RNC appellants are dissatisfied with the outcome of the FEC's rulemaking, they may challenge the Commission's coordination rules in an action for judicial review under the Administrative Procedure Act, in which they may raise both constitutional and statutory challenges to those rules. The district court was therefore clearly correct in holding these claims to be nonjusticiable and beyond the subject-matter jurisdiction of the special three-judge district court conferred by BCRA Section 403(a). *See* JSSA 134-56sa (per curiam).

II. THE RNC APPELLANTS LACK STANDING TO CHALLENGE THE "MILLIONAIRES PROVISIONS" OF BCRA SECTIONS 304 AND 319

The third question presented in the RNC's jurisdictional statement is whether BCRA's so-called "Millionaires Provisions" violate constitutional equal protection principles. The challenged provisions in BCRA Sections 304 and 319 allow a Senate or House candidate, respectively, to raise hard money in increased amounts if his or her opponent spends large sums of personal money on the campaign. The contribution limits increase depending on the amount of personal funds expended by the self-financed opponent. The statutory formula takes into account funds amassed by candidates (not including contributions from personal funds), so that an incumbent candidate with a sizable war chest will not benefit unless his or her self-financed opponent devotes a much larger amount of personal funds to the campaign. *See* BCRA § 316. A candidate whose opponent spends a "personal funds amount" more than a certain sum may also accept increased coordinated expenditures from his or her state or national party. *See* BCRA § 304(a) (Senate), § 319(a) (House). A candidate's ability to accept contributions and party coordinated expenditures under these increased limits is subject to an overall cap tied to the amount spent by the self-financed opponent. *Id.*

The RNC appellants contend that these provisions "effectively punish any Senate or House candidate who uses more than specified amounts of personal assets to fund his or her campaign," thereby violating such candidates' "First Amendment-protected rights to spend their own resources." RNC J.S. 4, 6. The district court unanimously and correctly held, however, that none of the RNC appellants has standing to challenge those provisions in this litigation. *See* JSSA 8sa (per curiam), 475-77sa (Henderson). As Judge Henderson explained, none of the RNC appellants claims to be a candidate or even a potential candidate for the House or Senate who might spend more than the specified amounts of personal funds on a campaign. *See* JSSA 477sa. Accordingly, a

claim that any of the RNC appellants would suffer disadvantage because of the challenged provisions is entirely theoretical at this point.

The RNC appellants also argue that political parties have standing to challenge Sections 304 and 319 on equal protection grounds because those provisions supposedly require parties to treat their own similarly situated candidates differently, with respect to making coordinated expenditures. *See* RNC J.S. Question Presented 3 and pp. 16-17. As Judge Henderson explained, that reading of BCRA is plainly wrong: "even in circumstances where the provisions *permit* a party committee to engage in unlimited coordinated spending [subject to the overall cap], they do not *require* a committee to do so." JSSA 477sa.

Moreover, whether the party coordinated-expenditure limits are altered in any given instance will depend on a large number of highly conjectural variables: the party's candidate must face a wealthy opponent; the opponent must decide to spend a "personal funds amount" over a certain sum; the relative campaign funds available to the respective candidates must exceed a certain ratio; and a candidate who otherwise qualifies to benefit from increased party coordinated expenditures must request them. This string of variables confirms that the RNC appellants fail to meet the Article III requirement of injury that is "actual or imminent, not conjectural or hypothetical." *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990) (internal quotation marks and citation omitted); *see also Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 601 (1992).

III. The NRLC Appellants Fail To Raise Any Justiciable Or Substantial Question With Respect To BCRA Section 212

Like the McConnell appellants, the NRLC appellants seek to challenge what they maintain is a requirement in BCRA Section 212 that "advance notice" be given of independent expenditures. *See* NRLC J.S. Question Presented 5 and p. 22. As we have explained in our response to the McConnell and NRA jurisdictional statements, at pp. 3-5,

the FEC has unambiguously construed Section 212 *not* to require any such advance notice. Accordingly, as the district court concluded (*see* JSSA 130-34sa (per curiam)), there is no credible threat that Section 212 will be enforced against anyone in the manner that the NRLC appellants fear, and so any challenge to Section 212 on the ground that it unconstitutionally requires "advance notice" is clearly nonjusticiable and without merit.

IV. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE GEOGRAPHIC SCOPE OF THE DISTRICT COURT'S INJUNCTIVE RELIEF

The NRLC appellants ask this Court to decide "[w]hether [the] District Court injunction should extend to activities outside the District of Columbia." NRLC J.S. Question Presented 6; *see also id.* at 22-24. That question presents no issue appropriate for this Court's consideration. The district court stayed its injunction on May 19, pending this Court's final disposition of the appeals from the district court's final judgment. On May 23, the Chief Justice denied the NRLC appellants' application to vacate the district court's stay. Thus, there is *no* injunction presently in effect, let alone one that is only being honored within the District of Columbia. This Court's final disposition of the appeals, of course, will have nationwide force. The question presented is thus plainly insubstantial.

V. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE CONGRESSIONAL INTERVENORS' STANDING UNDER BCRA SECTION 403(b)

Finally, the NRLC appellants ask this Court to decide whether BCRA Section 403(b), which permits Members of Congress to intervene in any action brought to challenge the constitutionality of BCRA, violates Article III standing principles. *See* NLRC J.S. Question Presented 7 and pp. 24-

27.[3] The NRLC argues that a party who seeks to intervene as a defendant must establish Article III standing, and contends that the courts of appeals have reached conflicting conclusions on that point. That question, however, is not presented by this case, because the district court assumed that a party seeking to intervene as a defendant must establish Article III standing, and then unanimously concluded that the intervenors in this case had done so. *See* App., *infra*, 4a-6a.

In challenging the intervenors' standing, the NRLC errs in analogizing this case to *Raines* v. *Byrd*, 521 U.S. 811, 829 (1997), and similar cases involving the standing of legislators who sought to vindicate various institutional interests. *See* NRLC J.S. 26. As the district court correctly explained, the intervenors in this case "do not seek to vindicate a 'sponsorship' interest in the Act." App., *infra*, 7a. Rather, the intervenors have Article III standing as direct *individual* participants in the electoral process, with respect to the laws governing the processes by which they seek and retain their offices. Thus, "as opposed to members of the general public, [intervenors] have a concrete, direct, and personal stake—as candidates and potential candidates—in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office." *Id.* at 6a.[4]

---

[3] The NRLC appellants acknowledge that Section 403(b), by providing for intervention of right by Members of Congress, removes any prudential standing concerns that might otherwise exist. *See* NRLC J.S. 25; *see also Raines* v. *Byrd*, 521 U.S. 811, 820 n.3 (1997).

[4] *See also Buckley* v. *Valeo*, 424 U.S. 1, 7-8, 12 n.11 (1976) (per curiam); *Nixon* v. *Shrink Missouri Gov't PAC*, 528 U.S. 377, 383 (2000); *Vote Choice, Inc.* v. *DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993) ("[A]n impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing."); *Meek* v. *Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993) (standing to intervene in defense of election law); *Marshall* v. *Meadows*, 921 F. Supp. 1490, 1492 (E.D. Va. 1996) (candidate standing to defend election law); *cf. Cook* v. *Gralike*, 531 U.S. 510, 531 (2001) (Rehnquist, C.J., concurring in the judgment) ("no one questions the standing" of candidates with respect to ballot-access provisions).

Moreover, it is far from clear how the NRLC appellants could benefit from their challenge to the intervenors' standing in this Court. Even if the NRLC appellants persuaded this Court that the intervenors lacked standing, that would not provide a basis for reversal or vacatur of any aspect of the district court's decision that was adverse to them, for they would still have to prevail on the merits against the Executive Branch defendants. The situation in this case is therefore closely analogous to that in *Buckley* v. *Valeo*, 424 U.S. 1, 12 (1976) (per curiam), in which this Court decided not to linger over questions of individual party standing given that "at least some" parties had standing with respect to each challenged statutory provision.

CONCLUSION

The Court should summarily dispose of the RNC and NRLC appellants' challenges to Sections 212, 214(b), 214(c), 304, 319, and 403(b). In all other respects, the Court should note probable jurisdiction of the appeals in these cases and set the cases for plenary review.

It is, moreover, highly ironic that the NRLC appellants would challenge the standing of the intervenor-appellees, given that two of the objecting appellants, Representative Mike Pence and Alabama Attorney General Bill Pryor, base their own standing on precisely the same kinds of interests in the electoral process. *See* McConnell, *et al.*, Second Amended Complaint ¶¶ 17, 18.

Respectfully submitted,

ROGER M. WITTEN
WILMER, CUTLER &
PICKERING
399 Park Avenue
New York, NY 10022

SETH P. WAXMAN
Counsel of Record
RANDOLPH D. MOSS
ERIC J. MOGILNICKI
EDWARD C. DUMONT
PAUL R.Q. WOLFSON
WILMER, CUTLER &
PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

JUNE 2003

APPENDIX

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-582
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NRA, *et al.*,

Plaintiffs,

v.

Civ. No. 02-581
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ECHOLS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-633
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*,

Plaintiffs,

v.

Civ. No. 02-751 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF BROADCASTERS,

Plaintiffs,

v.

Civ. No. 02-753 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

AFL-CIO, *et al.*,

Plaintiffs,

v.

Civ. No. 02-754 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ORDER GRANTING MOTION TO INTERVENE
(May 3, 2002)

Pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure and section 403(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA or Act), Senators John McCain, Russell Feingold, Olympia Snowe and James Jeffords and Representatives Christopher Shays and Martin Meehan (movants) move to intervene in these consolidated actions to defend BCRA's constitutionality. While the defendants do not object to the motion, several of the plaintiffs (objectors)[1] oppose it on the ground that the movants "do not have the requisite Article III standing" to support intervention. Opp'n at 3 (capitalization altered). We disagree. Accordingly, and for the following reasons, the motion to intervene is granted.

[1] Specifically, Representative Mike Pence, Alabama Attorney General Bill Pryor, Libertarian National Committee, Inc., Alabama Republican Executive Committee, Libertarian Party of Illinois, DuPage Political Action Council, Jefferson County Republican Executive Committee, Christian Coalition of America, Inc., Club for Growth, Indiana Family Institute, National Right to Life Committee, Inc., National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, Martin J. Connors and Barret Austin O'Brock oppose the movants' intervention.

Rule 24(a)(1) provides that "[u]pon timely application anyone shall be permitted to intervene in an action . . . when a statute of the United States confers an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1). Section 403(b) of the Act, in turn, provides that

> [i]n any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised . . . any member of the House of Representatives . . . or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment.

2 U.S.C. § 437h note. Because the plaintiffs have challenged numerous provisions of the Act on constitutional grounds, section 403(b) plainly confers upon each and every one of the movants an unconditional statutory right to intervene in the consolidated actions now before us.

The objectors argue that the standing inquiry does not end with the satisfaction of Rule 24(a)(1). Under Article III of the United States Constitution, our "judicial Power" extends only to live "Cases" or "Controversies." U.S. Const. art. III. The D.C. Circuit has long held that "because an intervenor participates on equal footing with the original parties to a suit, a movant for leave to intervene . . . must satisfy the same Article III standing requirements as original parties." *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994); *see S. Christian Leadership Conf. v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984); *see also Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) ("An Article III case or controversy is one where all parties have standing, and a would-be intervenor, because he seeks to participate as a party, must have standing as well.")[2]

---

[2] In *Diamond v. Charles*, 476 U.S. 54 (1986), the United States Supreme Court held that an intervenor seeking to continue its suit in the absence of the party on whose side intervention was permitted must demonstrate that it fulfills the standing

Building & Construction Trades and *Kelley* address the question of Article III standing under Rule 24(a)(2) as opposed to Rule 24(a)(1). To date, neither the Supreme Court nor the D.C. Circuit has specifically addressed whether an Article III standing analysis is as appropriate in the Rule 24(a)(1) context as it is in the Rule 24(a)(2) context. The movants suggest that "[t]he argument for a relaxed rule of standing where the intervenor has an unconditional statutory right to participate seems . . . stronger than the argument for relaxed standing in the (a)(2) context." Movants' Reply at 5 n.3. However, we see no need in this case to address that distinction or to resolve the question whether the movants must satisfy the constitutional requirements of standing—i.e., that they have suffered or will suffer "an injury in fact" which is "concrete and particularized," "actual or imminent," "fairly . . . trace[able] to the challenged action" and "redress[able] by a favorable decision," *Lujan v. Defenders of Wildlife*, 504 US. 555, 560-61 (1992) (internal quotations omitted)—because we believe, as discussed below, that the movants have satisfied those requirements in any event.

The movants allege that

> [a]s federal officeholders and candidates for, or potential candidates for, election to federal office, they are among those whose conduct the Act regulates, and among those whom the Act seeks to insulate from the actual or apparent corrupting influence of special interest money. They want to run in elections, participate in a political system, and serve in a government in which all participants

---

requirements of Article III. *See id.* at 68. Nonetheless, the Court reserved for another day the broader question of whether an intervenor must have Article III standing where the party on whose side intervention is sought remains in the litigation. *See id.* at 68-69. The circuits are split on that issue. *See Ruiz v. Estelle*, 161 F.3d 814, 831-32 (5th Cir. 1998) (D.C., Seventh and Eighth Circuits require intervenors to have Article III standing while Second, Fifth, Sixth, Ninth and Eleventh Circuits do not).

> comply with the reasonable contribution restrictions and other federal campaign finance regulations that the Act imposes in order to stop evasion and to prevent actual and apparent corruption. If any of the reforms embodied in the Act are struck down, . . . [the] movants will once again be forced to attempt to discharge their public responsibilities, raise money, and campaign in a system that [they believe to be] significantly corrupted by special-interest money.

Mem. in Supp. of Mot. to Intervene at 3-4; *see Lujan*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of injury. . . may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." (internal quotations and alteration omitted)); 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1914, at 418 (2d ed. 1986) (intervention pleading "is construed liberally in favor of the pleader and the court will accept as true the well-pleaded allegations" therein). These allegations are sufficient to support Article III standing.

The objectors' contrary position that (1) the movants "have not shown that they have an interest distinct from that of every other citizen," Opp'n at 8; (2) the movants have no legally protected interest "as sponsors and supporters" of the Act or "in upholding an unconstitutional statute," *id* at 8, 10; and (3) any injury the movants suffer cannot be redressed by a favorable decision, *see id.* at 12, is, simply stated, without merit.

First, as opposed to members of the general public, the movants have a concrete, direct, and personal stake-as candidates and potential candidates—in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office. *See Buchanan v. FEC*, 112 F. Supp. 2d 58, 65 (D.D.C. 2000) ("Precluding candidates from challenging [election] rules under the FECA would leave few others to do so . . . . [I]t is relatively self-evident that the people who have the most to gain and lose from the

criteria governing [the electoral process] are the candidates themselves."); *see also Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993) ("[A]n impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing." (citing *Buckley v. Valeo*, 424 U.S. 1, 12 & n.10 (1976) (per curiam))). The objectors have cited no case law to the contrary.

Second, notwithstanding the objectors' assertions, *see* Opp'n at 8-9, the movants do not seek to vindicate a "sponsorship" interest in the Act. Nor are they precluded from intervening to *defend* (rather than challenge) the Act. In arguing that "no litigant has a legally protected interest in upholding an unconstitutional statute," *id.* at 10, the objectors conflate the threshold issue of standing with the merits of the case and ignore the fact that the BCRA provisions the movants seek to defend are presumed constitutional until proven otherwise. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) ("Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds"). Moreover, a movant may intervene in support of government defendants where "it will be injured in fact by the setting aside of the government's action it seeks to defend," the "injury will have been caused by that invalidation" and "the injury would be prevented if the government action is upheld." *Am. Horse Prot. Ass'n v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001); *see also Meek v. Metro. Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993) (movants seeking to intervene in defense of "election system that governed their exercise of political power" sufficiently "alleged a tangible actual or prospective injury" under *Lujan*); *Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E. D. Va. 1996) (U.S. Senator seeking intervention to defend constitutionality of state election law permitted to intervene because he had "a vital interest in a procedure through which he [sought] election").

Finally, the injury the movants allege here—that they will be forced to raise money in a corrupt system *in the event the Act is struck down*—plainly would be redressed by a favorable decision *upholding* the Act's provisions. Accordingly, because it is clear from the face of the pleadings that the movants have an unconditional statutory right-and Article III standing—to seek such a decision, it is this 3rd day of May, 2002 hereby

ORDERED that the objectors' request for an oral hearing on the motion to intervene is denied, *see Sam Fox Publ'g Co. v. United States*, 366 U.S. 683, 693-94 (1961) (district court had discretion to decide motion to intervene without hearing when result was clear from face of application); and it is further

ORDERED that the motion to intervene is granted.

SO ORDERED.

KAREN LeCRAFT HENDERSON
United States Circuit Judge

COLLEEN KOLLAR-KOTELLY
United States District Judge

RICHARD J. LEON
United States District Judge